

SPEECH

OF

54

HON. J. H. THOMAS, OF TENNESSEE,

ON

THE BILL TO ESTABLISH A BOARD OF ACCOUNTS.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, FRIDAY, FEBRUARY 7, 1851.

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## BOARD OF ACCOUNTS.

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The House having resolved itself into a Committee of the Whole on the state of the Union, and taken up the bill entitled "An act to establish a Board of Accounts"—

Mr. THOMAS obtained the floor and said:

Mr. CHAIRMAN: During the last session of the present Congress, the public mind was greatly excited with the questions that were then before it, and Congress was called upon to heal "five bleeding wounds" which were then destroying the body politic. They were said to be healed, and I hope they were, for there is no man upon this floor who desires the prosperity of the country more than I do. The morbid feeling which then held possession of the public mind in a great degree, upon the question of slavery in the Territories, has been diverted to some extent, and has been turned upon the Treasury, and every means is to be used for its exhaustion. It is now bleeding from a hundred "wounds," to the amount of \$50,000,000 annually, and this the vital blood supplied by the labor of the toiling millions of our citizens; and this bill proposes to open another wound, by which this department may be the more thoroughly depleted. Sir, from its present state, its friends need be under no *very serious* apprehensions of plethora. The question should be how we shall stop the wounds already made, rather than inflict others.

In all cases where a legal claim exists against the United States, it is within the power, and, further, it is the duty, of the accounting officers of the Treasury to pay it. This is the business for which their offices were created, and it is not any difficulty upon this subject that is sought to be remedied by the bill and amendments now under consideration. But, sir, in the ever-varying events of life, there are occasional cases occurring which do not fall within the provisions of any general law, but which, from their individual and peculiar merits, commend themselves to the consideration of the law-making power, and demand relief by special legislation. Such cases always have and always will occur. The law, by "means of its generality," does not provide for them.

Until this time this class of cases has been presented to Congress by petition for relief, and it

has been granted in a great number. Some meritorious cases may have been, and doubtless are oppressively delayed; the present system of action by Congress is not perfect. But what are the merits of that proposed as a substitute? Its friends seem to urge it more upon the defects of the present practice than upon any merit they can find in that they invite us to accept in its stead. I have only to say for Congress, that if the statements made by the gentleman from New York, [Mr. NELSON,] be correct, Congress has done better than is generally supposed. He states that in ten years sixteen thousand five hundred and seventy-three cases were presented to the House of Representatives asking relief, and that upon these *only* three thousand four hundred and thirty-six bills were reported—that is, the committees of the House only decided in favor of that number, (three thousand four hundred and thirty-six,) and during the same period, not more than one thousand eight hundred and fifty-one "received final action." Does not the gentleman know, does not any man who has been a member upon this floor as long as he has, know, that these claims still survive, if they are not paid, and that they never die? Do we not all know that these claims are immortal, and that they flourish and improve, get better, and grow stronger every day they live? Now, what are the facts in relation to these claims? A claim is presented to-day, and it may be rejected or it may be paid; and though it may be wholly without merit and most properly rejected, it is presented at the next Congress with more confidence than ever, and so on from session to session and from Congress to Congress, gathering size and strength from every revolution. These claims, by their frequent presentation, have greatly contributed to the number of cases mentioned; some of them in the ten years having no doubt been counted ten times, and nearly all more than once. It is not then to be wondered at if the list of claims presented to Congress is very large, and the more rapidly it increases the greater evidence that Congress has done its duty by rejecting the greater number of cases.



These renewed cases receive accessions to their number at every Congress, until their name is "legion." But, sir, they are to a great extent old claims—many as old as the Revolution, and some even more ancient. And, sir, they have, very nearly all, not been allowed, for the simple reason that they should not be. But, sir, it is said just claims are sometimes delayed. It is a stereotyped clause in every constitution of a State, and as old as *Magna Charta*, that "justice shall be administered without sale, denial or delay." Yet how are cases hung up in the various courts? The gentleman from New York could have told you that such was the situation of the courts in New York, that if a case be contested, a final decision could not be obtained short of four or five years. Yet the State of New York does not propose to abolish her courts. It is very common for cases to be delayed and continued in the courts for years—even longer than the lifetime of every party to the record, so that it descends from generation to generation. That this should not be is very true; but should all courts be therefore abolished? So much in answer to the mere point of delay.

But, sir, suppose there is delay in getting relief from Congress, is this in cases having legal and proper claims upon the Government? Now, sir, legal claims all go to the Departments, and are not even presented to Congress. The claims that come here are nearly all addressed to the charity of the Government, or at most appeals to its liberality. I am desirous that all such applications should receive the consideration they deserve, but I am not sufficiently enlisted in their favor to support any measure to facilitate their allowance without regard to the interest of the Government. Really, sir, it seems that the public mind, or rather the mind of many members of Congress, is becoming restive lest means may not be devised to diminish the money in the Treasury fast enough, and they are ready to aid in every effort to accomplish an end, seemingly to them so desirable. Claims, no matter how often and how long refused, seem to have become stronger at this session than ever before. True, the resources of the Government are greater than they ever were before, its revenues having nearly doubled in the last few years; yet its expenditures have increased in a much greater proportion. Ten years ago we supported our Army at an average expense of about \$300 for each individual composing it, whereas now we are asked to appropriate a sum amounting to an average of over \$1,000 per man. This is but one of many items that might be enumerated, showing an enormous increase in the expenses, the aggregate of which is like to swallow up the whole income of the Government. These considerations, in connection with the fact that the United States now owe a debt of about \$75,000,000, should prompt us to redoubled diligence in husbanding our national resources rather than to the profligate practices that now prevail.

But to return to the bill before the House. What are the evils complained of? First, it is alleged that claimants or petitioners are greatly delayed; secondly, that the labor of attending to private claims is too great and that Congress must be relieved of it. I will not trouble the House further upon the subject of delay.

It is said that the consideration of these claims

interferes with the public business and imposes too much labor upon Congress. It is said we must do something to rid this House of the *trouble* of attending to private claims; that they intrench upon the business of the House too much. Gentlemen wish to be relieved of labor: verily it is desirable to have ease and rest, but it is our duty to desire more the public good; and as for the allegation that it interferes with the public business, it is enough to remark, that if the cases are such as to call properly for legislative action, they rightly constitute a part of the "public business."

Now the question recurs, what remedy will the measure proposed afford for the alleged evils? As has been remarked, all legal claims can now be paid upon application to the proper Department. But it is the claims which are not provided for by law that are to be referred to the proposed board. Now, will gentlemen think for a moment what it is they propose to do? These cases which, by reason of their peculiarity, do not fall within the provisions of the law, require special legislation for their relief. Nothing will do but the making of a special new law for the case in hand. The making of laws is vested by the Constitution in Congress, and Congress cannot delegate this power in any case: if it can in one, it may, with equal propriety, in all cases; and the proposed board may relieve Congress of all its labors. But this is so absurd that it is needless to multiply words upon this part of the subject.

There are but a very few members of this House who are disposed to vest the proposed board with power to make a final decision in any case; and it is strange that there is one; for if there is law to authorize the payment, the bureaus as now existing will settle it, and for such cases no such board is even asked—it is only for such cases as are not provided for by any law that the board is to be created. No money can be paid out of the Treasury without law. There is no law to pay those claims, nor can they be provided for by any general laws whatever, but each case must be the subject of legislation, such as its peculiar merits demand. I maintain you cannot delegate this power of legislation, nor can you vest it otherwise than as it is done in the Constitution.

"The legislative power" vested in Congress is not the mere enacting of such laws as may be directed by any other party, but it is first a power to judge and determine of the necessity and propriety of the proposed legislation, and when approved, then enforce the determination by an act. Sir, shall we part with the first and greatest, the right to determine what we shall do, and make Congress a mere machine to register the decrees of this board of our own creation? We have had much complaint about Executive dictation, and what is now proposed?—to submit to the President's recommendation. Nay, more than that: we are to pass a law to authorize the President to appoint men, whose opinions are to control, or have great influence upon Congress. Not to submit to his dictation, but to that of his appointees. (I say this not so much in reference to the President as to the members who are advocating this bill.)

The proposition to make the decisions of this proposed board final meets with so little favor, that I will consume no more time in its consideration,



but proceed to notice the proposition which requires this board to report the cases passed upon to Congress for final action. This in effect admits that the power to adjust claims not provided for by law cannot be delegated by Congress; and many of the friends of this bill are opposed to it even could it be done. What is to be the practical operation of this new system? You do not simply require this board to collect and report the facts of cases, but it is to be in all things constituted and proceed as a court. It is to have a clerk, with assistants, one or more, and an attorney to represent the United States, and the claimants are to have their advocates, and the board is to hold its regular sittings as a court of justice to hear and determine the causes upon proof and argument, and make a record of their decision; and after all this is done the board must certify to Congress a copy, not of the facts, nor of the opinion or judgment merely, but of the whole case, petition—proof, and decree, all; and for what? The cases are not provided for by law, and Congress is the law-making power, and the only power that can relieve. If Congress is to be governed by the board, then it would be sufficient to report merely the “*decision*.” And, again, if it is to be controlled by the facts, the proof is enough to be reported. In the first case, what effect is the judgment of the board to have upon Congress? Is the board to act the part of a grand-jury, to determine when the Government is to be put upon its trial, and to say that it shall only be called upon to answer when this grand inquest grants its permission? This cannot be so. You cannot prevent the citizens from memorializing Congress; and the bill now proposed provides that in case a claim is rejected the party may apply to Congress. Then the judgment of this board, by the terms of the bill, is not to be conclusive against either the United States or the petitioners. If it be the design that the facts of the several cases shall govern Congress, why, then, is this board to hear the proof and argument, and to decide? Is Congress unable to understand the facts upon which it is to legislate? In the early days of the Government, and until now, Congress has done its work without a guardian to advise and direct what it should do; but it seems that gentlemen are unwilling longer to trust the people’s representatives without the advice, not of the President, but of such persons as he may appoint. Sir, really and truly what good is to come of this board? We are not to legislate upon the assumption that we will not do our duty, and it would be unseemly to assume it of our successors. These proceedings being upon the ground that we will act as becomes us, let us refer again to the practical operation of the proposed system. Gentlemen say that the proceedings of this board will enable members of Congress to understand the cases before Congress which otherwise they could not comprehend.

Now, sir, by this bill, if a petition does not contain upon its face a case requiring relief in the opinion of this board, no proof shall be taken by said board, but the party may apply to Congress, and Congress will investigate as at present, by a reference to one of its various committees, just as though said board had not been created. If the case is one where the petition contains matter for relief in the judgment of the board, proof is ordered to be taken, and a trial is had. If the board

reject, then it must report the whole case, proof, their opinion, and all, to Congress, and it must be referred and pass through all the forms as at present; and if said board allow said claim, or give judgment in favor of the claimant, then the case, facts, proof, opinion, and all, must be reported to Congress, and must be referred to a committee, and reported upon, and understood by Congress: for, if the case is a proper one, Congress must legislate specially in relation to it. Now, sir, if this legislation is done at the bidding of this board, and without examination, then it is the legislation of the board, and not of Congress; while, if Congress does its duty, and properly investigates the facts, and legislates as it should do upon this knowledge, then the trial by the board was wholly unnecessary. Then the question is fairly presented, what good is to result from the passage of this bill? It is Congress that must legislate; and to justify Congress in legislating, the facts must be understood. Its members are selected and sent here because they are supposed to understand their duty; but this bill would fairly infer a very different state of facts. Is it because legal questions may arise that should be thus investigated? Congress is the constitutional court for the determination of such questions; and do gentlemen think Congress inadequate to the task, and propose the establishment of the board or court, having no jurisdiction, but only as a kind of moot court, the decisions of which are in any way, directly or indirectly, to control Congress? Sir, if they are for this bill, they are for all these absurdities.

Congress has never established a board of claims for the hearing of cases generally. The cases now sought to be provided for have been referred alone to Congress ever since the formation of the Government, and this notwithstanding the continual efforts for the establishment of some board of claims. This, I insist, is a continued opinion of Congress and the country against it. Yet there are some facts in the history of the Government which may be referred to profitably. After the last war with Great Britain, it was found that there were many of our citizens who had claims against our Government for property lost and destroyed, &c., during the war. This the property not of soldiers when in service, but of the citizens; and strong appeals were made to Congress to provide some speedy mode for their adjustment. In 1816, Congress, moved by the character of these petitions, passed a general law specifying the kind of cases that were to be paid, and providing for a board to determine upon them. Yet such was the jealousy of Congress, that this board, though to be restrained by a law then enacted defining the cases to be adjudged, was limited in its existence to two years. It should be remembered that this experiment was made at a time when there was quite as much virtue in the land as there is now, and our citizens were then quite as trustworthy.

The proceedings of this commission were of such a character as to attract the attention of Congress, and to induce a call upon the Secretary of War for information; and Mr. Callhoun, in 1818, then Secretary of War, sent in a report, with documents accompanying, which exposed the evils attending its operation. The subject was referred to a committee, of which the late Lewis Williams, of North Carolina, was chairman, a man of great industry and decided ability. Mr.



Williams, on the 11th of March, 1818, made a report, to which I beg the attention of the House. The report says:

"That in order to determine the propriety of continuing the above recited act or of extending its provisions, they have deemed it necessary to notice some of the practices which have grown up under the law. They would invite the attention of the House to a report of the Secretary of War, made on the 20th of February, in compliance with a resolution directing him to lay before the House an account of the sums awarded to the different claimants by the commissioner, under the act of 9th April, 1816, the species of property for which they were respectively awarded, distinguishing what sums have been paid, and the causes which delay or prevent the payment of the residue. Besides the documents from the Commissioner of Claims, the report embraces a statement from the late acting Secretary of War, (marked C, with documents marked one and two, and a statement from the Third Auditor.) These papers develop the fact, that on the frontiers of the State of New York, a system of fraud, forgery, and perhaps perjury, has been in operation, which the committee believe has never been witnessed in this country, and which they would hope has been rarely equalled in any other.

"The committee think the cases which will not be acted on when the law expires, had better be transferred to the War Department for adjudication. At present all claims of \$200 and upwards, decided by the commissioner, must be revised by the Secretary before they can be paid; and all claims arising under the ninth section, must be reported to Congress. The same errors of judgment, which should be guarded against in a claim of large amount, ought equally to be avoided in small claims, especially if often repeated, which must be the case as the law now stands. Correctness, certainty, and dispatch, are the benefits likely to result from the proposed transfer.

"The committee cannot but express their deep regret that any portion of the people of this country should so far forget the obligations of morality and social order as to engage in practices such as have been developed. Still more do they regret that a law originating in the benign and charitable dispositions of Government should be prostituted to purposes of such iniquity. If any people ever had reason to be virtuous and happy, it must be the people of the United States. The opportunities of life are so numerous and easy, the rewards of honest exertion so perfectly secured to every individual, that any departure from correct principles must be the result of a deep-rooted and causeless depravity. Against such offences, the denunciations of reasons will be of no avail. They are to be restrained only by the penalties of the law, which should, in cases of this kind, always be promptly and rigidly executed.

"Viewing the practices which have arisen under the law, the committee feel no hesitation in saying, that the act of the 9th April, 1816, and the act in amendment thereof, passed the 3d of March, 1817, should be permitted to expire after the 9th of April next ensuing."

And so thought the fifteenth Congress—and the act was permitted to expire. This experiment satisfied the country that good would not come of Boards of Claims; but this lesson, it is supposed, has so far passed from the memory of the public and of Congress, that another trial can be now had, and we are now asked to establish what has been proved inefficient and dangerous to public morals and to the public interest; and that under circumstances greatly more favorable to a successful issue.

Mr. STRONG here interrupted the gentleman from Tennessee, and asked if the act making provision for adjusting claims originating in the war with Great Britain, did not provide for making the decision of the commissioner final?

Mr. THOMAS replied: The decision was final for sums under \$200, but upon claims over that amount, it was the duty of the Secretary to reexamine and revise these cases, and upon satisfactory proof, to pay them, but the Secretary, with all his ability, and with the aid of the late Auditor Peter Hagner, who was *then* one of the most efficient men in the Government, could not prevent the

commission of frauds, and this for the reason that the cases did not arise from any legal and regular transactions with the Government, and to which its officers were witnesses, and of which the Departments afforded evidence. And it is just such cases that are to be referred to the proposed board—and these are a class of cases that of all others require the most undoubted proof, and the most scrutinizing examination. But I have not done with the practical operation of the proposed system. When a claim shall be presented to your proposed board, it is to be its duty to examine the petition; and if good upon its face, by its terms then, proof shall be ordered to be taken; but if, taking all the petition says to be true, no relief, in the opinion of the board, should be granted, it is to be rejected, and reported to Congress. If ordered to be proven, and then upon trial rejected, the whole case must be reported to Congress. Thus, in every case where an application is rejected, it must come to Congress, and this by provision of your bill. And why is this to be done? That Congress may revise the acts of this board, and if it has not decided rightly, to reverse the decision and provide for its payment. If the board decides favorably, your bill requires a like report that Congress may revise the case, and, if right, provide for its adjustment. So that the duties of Congress are the same, to revise and thoroughly to understand every case, as much so upon a favorable as an unfavorable decision; and none of these revisions can be made but upon a careful examination of the cases—the facts upon which relief is prayed for. Such cases are now referred to a committee of nine members. This bill rests upon the assumption, that nine honorable gentlemen of this House, who may be placed upon the Committee of Claims, will not discharge their duties faithfully, and that we can get three men appointed by the President who will be more faithful than the representatives of the people. It must be so, or you have no good reasons for appointing such a board. You must come to the conclusion that you can get three men appointed by the President, with the advice and consent of the Senate, who will better understand their duty than the members of this House. You are not called upon to legislate as this man or that may think just and right, but you are called upon to legislate upon the facts of the case themselves. Then, I maintain that there is no use or necessity for this board whatever. The existing evils are of such a character, if they be evils, that you have no proposition pending which can properly remedy them.

It is said the reports of your Board of Claims will enable members to understand cases; but I ask how it will have that effect? Will this board communicate facts in any other way than by means of the proof?

How are we to get at the facts? They read the proof, and cannot members do the same? Has it come to this, that Congress is incapable of examining evidence, and that it is necessary for it to have some tribunal established to tell it what it must do? I appeal to the sound discretion of gentlemen, is not this bill intended to appoint men whose duty it shall be to advise us as to our duty, to explain for us the law? We may not, it seems, administer it in our humble way, but we must empower them to administer it for us. What are they to do? They must report facts, and then



decide, and write out their opinion, for the guidance of Congress in its examination; and we are called upon thus to stultify ourselves, in aid of the general desire to squander the public money.

In my judgment there is no demand for any legislation upon this or upon many other measures now before Congress. We should pass the proper appropriations to carry on the Government, and let all the new subjects lay over. The public mind has been sufficiently excited, the country demands peace, and let time do its work of harmonizing the discordant feelings that have prevailed. The great mass of our people are content, and it is only our capitalists or scheming speculators that call for legislation upon new subjects.

The state of our Treasury should cause us to hesitate long before adopting any new measure having a tendency even to expenditure. The Mexican war was expensive, and we heard much upon the subject of the extravagance of the then Administration. But will gentlemen compare the first three years of Mr. Polk's administration with the expenditures and estimates of the administrations that succeeded. From statistics prepared by my colleague, Mr. Jones, the following facts appear:

The total cash expenditures for the first period of three years, commencing July 1, 1845, and terminating June 30, 1848, under the administration of Mr. Polk, being the three years of the war with Mexico, were \$138,643,081 09; annual average, \$46,214,360 36.

The actual and estimated expenditures of the second period, commencing July 1, 1850, and ending June 30, 1852, under the administrations of General Taylor and Mr. Fillmore, being after the close of the war with Mexico, were \$141,217,809 37; annual average, \$47,072,603 12; exceeding the aggregate expenditures of the first period \$2,574,728 28, and an annual excess over the expenditures of the first period of \$858,242 76.

These facts should admonish gentlemen to retrenchment, and this the more strongly, when it is remembered that the present Secretary of the Treasury, Mr. Corwin, estimates that there will not be sufficient revenue to defray the ordinary expenses of the Government; and all this should

be added to another fact, which to all prudent men would be enough, that the United States now owe a debt of near seventy-five millions, a portion of which falls due in 1853. Sir, under the present state of affairs, the great subject should be retrenchment and economy; no new expenditures until the national debt is paid. I feel that every principle of prudence and patriotism demands this course at our hands, and all my votes shall be to effect this end so desirable. But, sir, to return to the bill under consideration. There are courts now in every State and Territory of this Union, held by United States officers, who are now in the receipt of salaries from the Government; and if Congress is determined to change the present mode, then, sir, the best thing that can be done, if a change must be, is to let the amendment offered by the gentleman from North Carolina be adopted, referring these cases to the courts now organized, to be examined and reported for the action of Congress. Sir, if we are tired of the discharge of our constitutional duties, and must be relieved, then transfer the duties to another constitutional branch of the Government, and do not labor to enlarge its powers by creating new branches of Government, and new officers with extended powers—powers extended to disburse and scatter the money of the people, and for little else. The country has done well without such a board from its commencement; and the hardships now complained of are not among those who have served the country, and who have lost their property in the public service—no, sir. These most meritorious of all cases are not thought of; nor are the proper facilities afforded to enable them to obtain their just claims before the Department which should now, under the existing law, grant relief. Any relief that I could extend to claimants of any class I would gladly attempt. But, sir, this bill gives no relief where relief is most wanted and most deserved. Sir, the best relief possible is to put proper men in the Departments, able and willing to do their duty, and faithful men in Congress, as able and willing to do theirs, and we shall have no use for any other Board of Claims than those now existing.

